

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JUAN MIGUEL NIEVES, *individually*)
and on behalf of all others similarly situated,)
Plaintiff,)

v.)

Civil Action No. 1:19-cv-1333

RREAL IMAGE, INC. d/b/a “The Salsa)
Room,” and WILFREDO VILLAREAL,)
Defendants.)

ORDER

This Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, collective action for unpaid overtime wages is before the Court on the Magistrate Judge’s Report and Recommendation as to an appropriate amount of damages, attorney’s fees, and costs in this matter. For the reasons that follow, the findings and conclusions of the Magistrate Judge’s Report and Recommendation will be adopted.

This matter previously came before the Court on plaintiff’s Motion for Sanctions and for Entry of an Order of Default against defendant RReal Image, Inc. d/b/a “The Salsa Room.” Plaintiff’s motion was referred to United States Magistrate Judge Theresa C. Buchanan for preparation of a Report and Recommendation. On May 15, 2020, the Magistrate Judge recommended that plaintiff’s Motion for Sanctions and for Entry of an Order of Default be granted. Specifically, the Magistrate Judge recommended that default judgment be entered against defendant RReal Image, Inc. as a sanction pursuant to Rule 37(b)(2)(A)(vi), Fed. R. Civ. P., and that plaintiff be awarded \$3,780.00 in attorney’s fees. No objections to the Magistrate Judge’s Report and Recommendation were filed. A June 2, 2020 Order adopted the findings and conclusions of the Report and Recommendation, entered default judgment as to liability against

defendant RReal Image, Inc. as a sanction, awarded plaintiff \$3,780.00 in attorney's fees, and remanded the matter to the Magistrate Judge to determine an appropriate amount of damages and attorney's fees.

Following plaintiff's submission of briefing outlining an appropriate award of damages and attorney's fees, the Magistrate Judge prepared a Report and Recommendation. The Magistrate Judge's July 22, 2020 Report and Recommendation recommended entry of an Order (1) awarding plaintiff unpaid overtime wages in the amount of \$3,920.00, (2) \$3,920.00 in statutory liquidated damages, and (3) \$8,329.75 in attorney's fees and costs.¹ The Magistrate Judge's Report and Recommendation noted that because default judgment as to liability had been entered against defendant RReal Image, Inc. only and had not been entered as to defendant Wilfredo Villareal, the award of damages and attorney's fees should be entered only against defendant RReal Image, Inc.² The Magistrate Judge also recommended administrative termination of plaintiff's Motion for Entry of Judgment as a pending motion because this filing constitutes a responsive brief, not a motion.

Upon consideration of the record and Magistrate Judge's Report and Recommendation, and having found no clear error,³

The Court **ADOPTS**, as its own, the findings of fact and recommendations of the United

¹ The July 22, 2020 Report and Recommendation's recommended award of attorney's fees and costs consists of \$7,770.00 in fees and \$559.75 in costs. The July 22, 2020 Report and Recommendation's recommended award is separate from the \$3,780.00 in attorney's fees and costs awarded in connection with plaintiff's Motion for Sanctions and for Entry of an Order of Default.

² Thus, adoption of the Magistrate Judge's Report and Recommendation regarding an appropriate award of damages, attorney's fees, and costs to assess against defendant RReal Image, Inc. would not end this matter because plaintiff's claim against defendant Wilfredo Villareal remains unresolved. *See* Rule 54(b), Fed. R. Civ. P.

³ *See Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (in the absence of any objections to a magistrate judge's report and recommendation, the court "need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (citation and internal quotation marks omitted).

States Magistrate Judge, as set forth in the Report and Recommendation (Dkt. 25).

Accordingly,

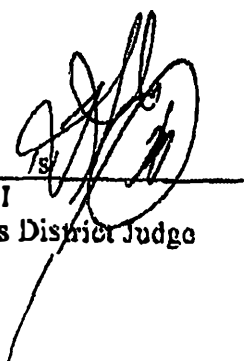
It is hereby **ORDERED** that defendant RReal Image, Inc. d/b/a "The Salsa Room" must pay plaintiff Juan Miguel Nieves for (i) \$3,920.00 in unpaid overtime wages, (ii) \$3,920.00 in statutory liquidated damages, and (iii) \$8,329.75 in attorney's fees and costs.

It is further **ORDERED** that the June 2, 2020 Order awarding plaintiff Juan Miguel Nieves \$3,780.00 in attorney's fees and costs remains in full force and effect. Because the instant Order requires defendant RReal Image, Inc. d/b/a "The Salsa Room" to pay \$8,329.75 in attorney's fees and costs and the June 2, 2020 Order requires defendant RReal Image, Inc. d/b/a "The Salsa Room" to pay \$3,780.00 in attorney's fees and costs, the total amount of attorney's fees and costs owed to plaintiff is \$12,109.75.

It is further **ORDERED** that the Clerk is **DIRECTED** to terminate plaintiff's Motion for Entry of Judgment (Dkt. 23).

The Clerk is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia
August 17, 2020



T. S. Ellis, III
United States District Judge